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WILMER, CUTLER & PICKERING

2445 M STREET, N.W.  
WASHINGTON, D.C. 20037-1420

TELEPHONE (202) 663-6000  
FACSIMILE (202) 663-6454

LYNN R. CHARYTAN  
DIRECT LINE (202)  
663-6455

4 CARLTON GARDENS  
LONDON SW1Y 5AA  
TELEPHONE 011 (4471) 839-4466  
FACSIMILE 011 (4471) 839-3537

RUE DE LA LOI 15 WETSTRAAT  
B-1040 BRUSSELS  
TELEPHONE 011 (322) 231-0903  
FACSIMILE 011 (322) 230-4322

FRIEDRICHSTRASSE 95  
BRIEFKASTEN 29  
D-10117 BERLIN  
TELEPHONE 011 (4930) 2643-3601  
FACSIMILE 011 (4930) 2643-3630

April 10, 1995

VIA MESSENGER

Mr. William F. Caton  
Acting Secretary  
Federal Communications Commission  
1919 M Street, N.W.  
Room 222, Stop Code 1170  
Washington, D.C. 20554

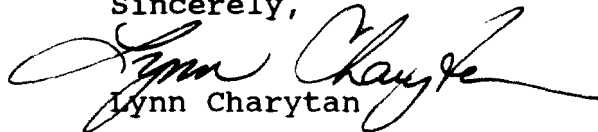
**RE: Ex Parte Correspondence Concerning  
Applicability of Designated Entity  
Rules to LLCs in PP Docket No. 93-253**

Dear Mr. Caton:

Due to a copying error, a line was missing from page two of the letter we filed on April 7, 1995, regarding the above-referenced matter. Please accept the attached, corrected copy of that letter for filing in lieu of the copy filed on April 7.

Thank you.

Sincerely,

  
Lynn Charytan

cc: Kathleen Ham  
Rosalind K. Allen  
Peter Tenhula  
Jay Markley  
Lisa Warner  
Andrew Sinwell

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WILMER, CUTLER & PICKERING

2445 M STREET, N.W.  
WASHINGTON, D.C. 20037-1420

TELEPHONE (202) 663-6000  
FACSIMILE (202) 663-6454

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663-6455

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FRIEDRICHSTRASSE 95  
BRIEFKASTEN 29  
D-10117 BERLIN  
TELEPHONE 011 (4930) 2643-3601  
FACSIMILE 011 (4930) 2643-3630

April 7, 1995

VIA MESSENGER

Ms. Kathleen Ham  
Commercial Radio Division  
Wireless Telecommunications Bureau  
Federal Communications Commission  
2025 M Street, N.W. -- Room 5202  
Washington, D.C. 20554

RE: Ex Parte Correspondence Concerning  
Applicability of Designated Entity  
Rules to LLCs in PP Docket No. 93-253

Dear Ms. Ham:

This letter responds to questions raised in our March 3, 1995 meeting to discuss our previous filings of record with the staff of the Wireless Bureau, the Office of Plans and Policy, and the Office of General Counsel, regarding creation of a limited liability company ("LLC") as a woman/minority controlled designated entity for the purpose of holding PCS entrepreneur block licenses. The designated entity that we have proposed would be organized as an LLC under the laws of the State of Maryland. The LLC's control group would hold at least 50.1% of the voting interest and 25% of the equity in the entity. In addition, except for one non-minority male, the control group would be composed entirely of qualifying individuals or entities, and these qualifying individuals or entities would hold more than 50.1% of the control group's voting interest. While this structure would be permissible under the rules for a corporate designated entity, it would disqualify a partnership for designated entity status. See e.g., Erratum, PP Docket No. 93-253 ¶ 2 (Jan. 10, 1995).

Under Maryland law, in both general and limited partnerships, a general partner has at least apparent authority to act for and bind the partnership unless the general partner in fact lacks such authority and the party with whom that partner is dealing is aware that the partner lacks such authority. See Md. Corps & Ass'ns Code Ann. §§ 9-301(a), 10-403(a) (1993). Because a limitation in the partnership agreement does not necessarily provide a third party with knowledge that a general partner lacks requisite authority, any general partner could theoretically bind the partnership.

However, in Maryland, the doctrine of apparent authority does not extend by statute to members<sup>1/</sup> of an LLC if a limitation of such authority is included in the LLC's articles of organization. Section 4A-401(a)(3) of the Corporations and Associations Article of the Annotated Code of Maryland permits the parties forming an LLC to include in the articles of organization (which would be filed with the Maryland State Department of Assessments and Taxation at the time of the LLC's creation) a provision removing the authority of a member to act for the LLC solely by virtue of membership. Under Maryland law, therefore, a limitation in the articles of organization ensures that:

(i) No member of the limited liability company is an agent of the limited liability company solely by virtue of being a member, and no member has authority to act for the limited liability company solely by virtue of being a member; and

(ii) Each person dealing with a member is presumed to have knowledge that the member has no authority to act for the limited liability company solely by virtue of being a member. Md. Corps & Ass'ns Code Ann. § 4A-401(a)(3).

Thus, under Maryland law, a limitation in the LLC's articles of organization, filed with the state, provides constructive knowledge to third parties and removes the requirement for actual knowledge that a member's authority is limited. Moreover, once a limitation on members' authority is included in the articles of organization, it cannot be amended without the unanimous consent of all members. Md. Corps. & Ass'ns Code Ann. § 4A-204(c). Copies of the applicable statutory provisions are attached hereto.

Accordingly, with the § 4A-401(a)(3) limitation in the articles of organization, a member of an LLC would have no greater authority to bind the LLC than a shareholder would have to bind a corporation. This critical distinction between partnerships and LLCs suggests that the corporate model control group requirements should be applied to LLCs governed under state laws such as Maryland's, at least with regard to the type of centrally-managed LLC that we described in our previous letter on this matter. As we have noted, in this case the LLC would be centrally governed by managers or directors whose duties and responsibilities would be similar to those of a corporation's board of directors. Day-to-day operational and management responsibility would be vested in this managing board. In addition, as with a corporation, the managing board would have

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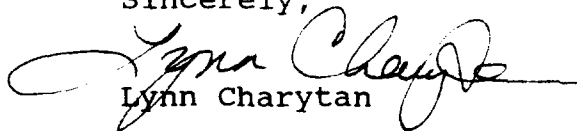
<sup>1/</sup> Members are those individuals or entities holding an ownership interest in the LLC.

authority to appoint a CEO, President, and other officers with functions similar to those of corporate officers.

Because there are significant tax advantages to the LLC structure for financial investors in the LLC (and to the LLC itself), the ability to organize and preserve limited liability in this fashion would promote the ability of such a designated entity to raise financing, a primary goal of the Commission's designated entity rules.

For these reasons, we request confirmation that a Maryland LLC organized as described above will be governed by the rules applicable to a corporation seeking to qualify as a designated entity. Two copies of this letter have been provided for filing in the above-referenced docket.

Sincerely,

  
Lynn Charytan

cc: Rosalind K. Allen  
Jay Markley  
Lisa Warner  
Peter Tenhula  
Andrew Sinwell

**§ 4A-204**

## ANNOTATED CODE OF MARYLAND

(5) Acquire by purchase or in any other manner, take, receive, own, hold, improve, and otherwise deal with any interest in real or personal property, wherever located;

(6) Issue notes, bonds, and other obligations and secure any of them by mortgage or deed of trust or security interest of any or all of its assets;

(7) Purchase, take, receive, subscribe for or otherwise acquire, own, hold, vote, use, employ, sell, mortgage, loan, pledge, or otherwise dispose of and otherwise use and deal in and with stock or other interests in and obligations of other corporations, associations, general or limited partnerships, limited liability companies, foreign limited liability companies, business trusts, and individuals;

(8) Invest its surplus funds, lend money in any manner which may be appropriate to enable it to carry on the operations or fulfill the purposes set forth in its articles of organization, and take and hold real property and personal property as security for the payment of funds so loaned or invested;

(9) Elect or appoint agents and define their duties and fix their compensation;

(10) Sell, convey, mortgage, pledge, lease, exchange, transfer, and otherwise dispose of all or any part of its property and assets;

(11) Be a promoter, stockholder, partner, member, associate, or agent of any corporation, partnership, limited liability company, foreign limited liability company, joint venture, trust, or other enterprise;

(12) Indemnify and hold harmless any member, agent, or employee from and against any and all claims and demands, except in the case of action or failure to act by the member, agent, or employee which constitutes willful misconduct or recklessness, and subject to the standards and restrictions, if any, set forth in the articles of organization or operating agreement;

(13) Make and alter operating agreements, not inconsistent with its articles of organization or with the laws of the State, for the administration and regulation of the affairs of the limited liability company;

(14) Cease its activities and dissolve; and

(15) Do every other act not inconsistent with law which is appropriate to promote and attain the purposes set forth in its articles of organization. (1992, ch. 536)

**§ 4A-204. Articles of organization.**

(a) *Contents.* — The articles of organization shall set forth:

(1) The name of the limited liability company;

(2) The latest date on which the limited liability company is to dissolve;

(3) The purpose for which the limited liability company is formed;

(4) The address of its principal office in this State and the name and address of its resident agent; and

(5) Any other provision, not inconsistent with law, which the members elect to set out in the articles, including, but not limited to, a statement that the authority of members to act for the limited liability company solely by virtue of their being members is limited.

## CORPORATIONS AND ASSOCIATIONS

## § 4A-206

(b) *Exclusions.* — It is not necessary to set out in the articles of organization any of the powers enumerated in this title.

(c) *Amendments.* — An amendment to the articles of organization shall be:

- (1) In writing;
- (2) Approved by unanimous consent of the members;
- (3) Executed under the provisions of § 4A-206 of this subtitle; and
- (4) Filed for record with the Department. (1992, ch. 536.)

**§ 4A-205. Certificate of correction.**

(a) *General rule.* — If any document filed with the Department under this title contains any typographical error, error of transcription, or other technical error or has been defectively executed, the document may be corrected by the filing of a certificate of correction.

(b) *Required contents of certificate.* — A certificate of correction shall set forth:

- (1) The title of the document being corrected;
- (2) The name of each party to the document being corrected;
- (3) The date that the document being corrected was filed; and
- (4) The provision in the document as previously filed and as corrected and, if execution of the document was defective, the manner in which it was defective.

(c) *Limitation of use.* — A certificate of correction may not make any other change or amendment that would not have complied in all respects with the requirements of this article at the time the document being corrected was filed.

(d) *Execution of certificate.* — A certificate of correction shall be executed in the same manner in which the document being corrected was required to be executed.

(e) *Change in document's effective date; rights and liabilities not affected.* — A certificate of correction may not:

- (1) Change the effective date of the document being corrected; or
- (2) Affect any right or liability accrued or incurred before its filing, except that any right or liability incurred by reason of the error or defect being corrected shall be extinguished by the filing if the person having the right has not detrimentally relied on the original document. (1992, ch. 536.)

**§ 4A-206. Execution of articles and certificates.**

(a) *Signatories.* — Articles and certificates required by this title to be filed with the Department shall be executed in the following manner:

- (1) Articles of organization shall be executed by any individual authorized to do so by the persons forming the limited liability company; and
- (2) Articles of amendment, articles of merger, certificates of correction, articles of dissolution, articles of continuation, and articles of cancellation shall be executed by an authorized person.

(b) *Power of attorney.* (1) An authorized person may sign any articles or certificates by an attorney in fact.

## CORPORATIONS AND ASSOCIATIONS

## § 4A-401

## § 4A-302. Parties to actions.

A member of a limited liability company is not a proper party to a proceeding by or against a limited liability company, solely by reason of being a member of the limited liability company, except:

(1) Where the object of the proceeding is to enforce a member's right against or liability to the limited liability company; or

(2) As provided in Subtitle 8 of this title. (1992, ch. 536.)

## § 4A-303. Limited liability company property.

(a) *Acquisition.* — Real and personal property owned or purchased by a limited liability company may be acquired in the name of the limited liability company.

(b) *Binding effect of documentation.* — An instrument or document for the acquisition, mortgage, or disposition of property of the limited liability company shall be valid and binding upon the limited liability company if executed by 1 or more authorized persons. (1992, ch. 536.)

## Subtitle 4. Relationship of Members to Each Other.

## § 4A-401. Member as agent of company.

(a) *In general.* — (1) Except as provided in paragraph (3) of this subsection or in the operating agreement, each member is an agent of the limited liability company for the purpose of its business.

(2) Except as provided in paragraph (3) of this subsection, the act of each member, including the execution in the name of the limited liability company of any instrument, for apparently carrying on in the usual way the business of the limited liability company of which the person is a member, binds the limited liability company, unless:

(i) The member so acting has in fact no authority to act for the limited liability company in the particular matter; and

(ii) The person with whom the member is dealing has actual knowledge of the fact that the member has no such authority.

(3) If the articles of organization contain a statement that the authority of members to act for the limited liability company solely by virtue of their being members is limited:

(i) No member of the limited liability company is an agent of the limited liability company solely by virtue of being a member, and no member has authority to act for the limited liability company solely by virtue of being a member; and

(ii) Each person dealing with a member is presumed to have knowledge that the member has no authority to act for the limited liability company solely by virtue of being a member.

(b) *Agency established through proof or estoppel.* — Notwithstanding a provision in the articles of organization or operating agreement that the au-

## § 4A-402

## ANNOTATED CODE OF MARYLAND

thority of a member to act for the limited liability company solely by virtue of being a member is limited, a person dealing with a member may establish:

- (1) That the member is an agent of the limited liability company; or
- (2) That the limited liability company should be estopped from denying that the member was its agent.

(c) *Nonbinding acts.* — Unless the act of a member is authorized by the limited liability company, the act of a member that is not apparently for the carrying on of the business of the limited liability company in the usual way does not bind the limited liability company.

(d) *Acts requiring unanimous consent or abandonment of business.* — Unless the members unanimously consent or unless all other members have abandoned the business, no member has authority to:

- (1) Assign the property of the limited liability company in trust for creditors or on the assignee's promise to pay the debts of the limited liability company;
- (2) Dispose of the goodwill of the business;
- (3) Do any other act which would make it impossible to carry on the ordinary business of the limited liability company;
- (4) Confess a judgment; or
- (5) Submit a limited liability company claim or liability to arbitration or reference. (1992, ch. 536)

## § 4A-402. Operating agreement.

(a) *In general.* — Except for the requirement set forth in § 4A-404 of this subtitle that certain consents be in writing, members may enter into an operating agreement to regulate or establish any aspect of the affairs of the limited liability company or the relations of its members, including provisions establishing:

- (1) The manner in which the business and affairs of the limited liability company shall be managed, controlled, and operated, which may include the granting of exclusive authority to manage, control, and operate the limited liability company to persons who are not members;
- (2) The manner in which the members will share the assets and earnings of the limited liability company;
- (3) The rights of the members to assign all or a portion of their interests in the limited liability company;
- (4) The circumstances in which any assignee of a member's interest may be admitted as a member of the limited liability company;
- (5) (i) The right to have and a procedure for having a member's interest in the limited liability company evidenced by a certificate issued by the limited liability company;
- (ii) The procedure for assignment, pledge, or transfer of any interest represented by the certificate; and
- (iii) Any other provisions dealing with the certificate; and
- (6) The method by which the operating agreement may from time to time be amended.



## CORPORATIONS AND ASSOCIATIONS

## § 4A-404

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(b) *Initial agreement.* — (1) (i) The initial operating agreement shall be agreed to by all persons who are then members.

(ii) Unless the articles of organization specifically require otherwise, the operating agreement need not be in writing.

(2) If the operating agreement does not provide for the method by which the operating agreement may be amended, then all of the members must agree to any amendment of the operating agreement.

(3) An amendment to an operating agreement must be evidenced by a writing signed by an authorized person if:

(i) The operating agreement is in writing;

(ii) The amendment was adopted without the unanimous consent of members, or

(iii) An interest in the limited liability company has been assigned to a person who has not been admitted as a member.

(4) A copy of any written amendment to the operating agreement shall be delivered to each member who did not consent to the amendment and to each assignee who has not been admitted as a member.

(c) *Enforcement.* — (1) A court may enforce an operating agreement by injunction or by granting such other relief which the court in its discretion determines to be fair and appropriate in the circumstances.

(2) As an alternative to injunctive or other equitable relief, when the provisions of § 4A-903 of this title are applicable, the court may order dissolution of the limited liability company. (1992, ch. 536.)

#### § 4A-403. Consent by members.

Unless otherwise provided in this title or in the operating agreement:

(1) Members shall vote in proportion to their respective interests in profits of the limited liability company; and

(2) Decisions concerning the affairs of the limited liability company shall require the consent of members holding at least a majority of the interests in profits of the limited liability company. (1992, ch. 536.)

#### § 4A-404. Unanimous consent of members.

Wherever this title requires the unanimous consent of members to allow the limited liability company to act:

(1) The consent shall be in writing; and

(2) The operating agreement may provide that the action may be taken on consent of less than all of the members or that the consent of certain members or classes of members is not required to take the action. (1992, ch. 536.)

## CORPORATIONS AND ASSOCIATIONS

## § 9-301

*Bank v. Newrath*, 261 Md. 321, 275 A.2d 495 (1971).

**Hence, deed of trust by partner was invalid.** — A deed of trust given by a partner to secure a note was invalid, as he sought to convey, as individually owned property, that which was partnership property. *Madison Nat'l Bank v. Newrath*, 261 Md. 321, 275 A.2d 495 (1971).

**The legal title of individual partners is an empty technicality.** *Madison Nat'l Bank v. Newrath*, 261 Md. 321, 275 A.2d 495 (1971).

**With the exception of purchase for value without notice, the legal title of individual partners is an empty technicality.** *Madison Nat'l Bank v. Newrath*, 261 Md. 321, 275 A.2d 495 (1971).

**Thus, purchaser may obtain specific performance of contract to convey.** — The purchaser could obtain specific performance of the contract executed by one partner to convey partnership real estate. *Madison Nat'l Bank v. Newrath*, 261 Md. 321, 275 A.2d 495 (1971).

**And the signature of one of two partners was sufficient to convey title to partnership property.** *Madison Nat'l Bank v. Newrath*, 261 Md. 321, 275 A.2d 495 (1971).

**Agreement as to title of property upon dissolution of partnership.** — Where the partners bought property and took title as joint tenants, but had agreed that upon the termination of the partnership the property should be held in tenancy in common, the court upheld the agreement with respect to title effective upon dissolution of the partnership. *Madison Nat'l Bank v. Newrath*, 261 Md. 321, 275 A.2d 495 (1971).

**Effect of agreement at partner's death.** — Under the express terms of the partnership

agreement, it was held that the interest of one partner in partnership real estate passed upon his death under the terms of his will and did not vest in the surviving partner. *Williams v. Doveil*, 202 Md. 351, 96 A.2d 484 (1953).

**Effect of access to documents.** — Since partners have complete access to partnership books but have no access to a partner's personal papers, the fact that defendant's partners had such access strongly suggests that the documents are partnership books. *United States v. Mandel*, 437 F. Supp. 258 (D. Md. 1977), *aff'd* in part, vacated in part on other grounds, 591 F.2d 1347 (4th Cir. 1979).

**Fact that records contain many entries that are purely personal in nature does not establish that they are not partnership property.** *United States v. Mandel*, 437 F. Supp. 258 (D. Md. 1977), *aff'd* in part, vacated in part on other grounds, 591 F.2d 1347, *aff'd*, 602 F.2d 653 (4th Cir. 1979).

**Documents were not an attorney's personal papers simply because he had the right to possess or destroy them after they were used for partnership purposes.** *United States v. Mandel*, 437 F. Supp. 258 (D. Md. 1977), *aff'd* in part, vacated in part on other grounds, 591 F.2d 1347, *aff'd*, 602 F.2d 653 (4th Cir. 1979).

**Day-timer forms used by an attorney to prepare client billings, which were purchased with partnership funds for use in partnership business, were partnership property.** *United States v. Mandel*, 437 F. Supp. 258 (D. Md. 1977), *aff'd* in part, vacated in part on other grounds, 591 F.2d 1347, *aff'd*, 602 F.2d 653 (4th Cir. 1979).

*Subtitle 3. Relations of Partners to Persons  
Dealing with the Partnership.*

§ 9-301. Partner agent of partnership.

(a) *Acts of partners bind partnership.* — Every partner is an agent of the partnership for the purpose of its business, and the act of every partner, including the execution in the partnership name of any instrument, for apparently carrying on in the usual way the business of the partnership of which he is a member binds the partnership, unless the partner so acting has in fact no authority to act for the partnership in the particular matter, and the person with whom he is dealing has knowledge of the fact that he has no such authority.

(b) *Nonbinding acts.* — An act of a partner which is not apparently for the carrying on of the business of the partnership in the usual way does not bind the partnership unless authorized by the other partners.

## § 9-301

## ANNOTATED CODE OF MARYLAND

(c) *Authority of partners.* — Unless authorized by the other partners or unless they have abandoned the business, one or more but less than all the partners have no authority to:

- (1) Assign the partnership property in trust for creditors or on the assignee's promise to pay the debts of the partnership;
- (2) Dispose of the good will of the business;
- (3) Do any other act which would make it impossible to carry on the ordinary business of the partnership;
- (4) Confess a judgment; or
- (5) Submit a partnership claim or liability to arbitration or reference.

(d) *Acts in contravention of restriction on authority.* — No act of a partner in contravention of a restriction on his authority shall bind the partnership to persons having knowledge of the restriction. (An. Code 1957, art. 73A, § 9; 1975, ch. 311, § 2.)

**Maryland Law Review.** — For discussion of the Maryland Uniform Limited Partnership Act and the liability of putative limited partners, see 80 Md. L. Rev. 399 (1980).

**Partner acts as both principal and agent.** — In a case involving a partnership, the contract of partnership constitutes all of its members as agents of each other and each partner acts both as a principal and as the agent of the others in regard to acts done within the apparent scope of the business, purpose and agreement of the partnership or for its benefit. Partnership cases may differ from principal and agent and master and servant relationships because in the nonpartnership cases, the element of control or authorization is important. This is not so in the case of a partnership because a partner is also a principal, and control and authorization are generally within his power to exercise. *Kay v. Gitomer*, 253 Md. 32, 251 A.2d 853 (1969).

There must be actual authorization by all of the other partners before the signature of less than all of the partners can confess a judgment against the partnership. *Shafer Bros. v. Kite*, 43 Md. App. 601, 406 A.2d 673 (1979).

For "actual authorization" there must be some positive evidence of consent or ratification. *Shafer Bros. v. Kite*, 43 Md. App. 601, 406 A.2d 673 (1979).

Authorization cannot be implied as the ordinary course of business. *Shafer Bros. v. Kite*, 43 Md. App. 601, 406 A.2d 673 (1979).

Consent of less than all of the partners to a confessed judgment note against a partnership does not operate to bind the other

partners to the confessed judgment portion of the instrument, nor any partner actually signing such an instrument, unless the other partners "actually authorized" the signing. *Shafer Bros. v. Kite*, 43 Md. App. 601, 406 A.2d 673 (1979).

**Destruction of partnership documents.** — As an agent of the partnership acting within the scope of his authority, a law partner would have been entitled to destroy partnership documents with the consent of his partners, so that the fact that this consent was given, either expressly or impliedly, does not alter the fact that the documents are partnership property. *United States v. Mandel*, 437 F. Supp. 258 (D. Md. 1977), *aff'd in part, vacated in part on other grounds*, 591 F.2d 1347, *aff'd*, 603 F.2d 653 (4th Cir. 1979).

**Notes executed by one partner.** — A firm is bound by notes executed by one partner, without showing that he had express authority from his copartner, when such authority would be implied from the nature of the business. *Courtesy v. Baker*, 1 Har. & J. 28 (1826); *Hopkins v. Boyd*, 11 Md. 107 (1857); *Bradford v. Harford Bank*, 148 Md. 1, 128 A. 898 (1925), citing *Porter v. White*, 39 Md. 613 (1874).

A firm was bound by notes executed by one partner, without showing that he had express authority from his copartner, when the partner acted within the scope of his authority. *Kay v. Gitomer*, 253 Md. 32, 251 A.2d 853 (1969).

Applied in *Seaboard Sur. Co. v. Richard F. Kline, Inc.*, 91 Md. App. 230, 603 A.2d 135 (1992).

## § 9-302.

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## CORPORATIONS AND ASSOCIATIONS

## § 10-403

(v) Filing an answer or other pleading admitting or failing to contest the material allegations of a petition filed against him in any proceeding of this nature; or

(vi) Seeking, consenting to, or acquiescing in, the appointment of a trustee, receiver, or liquidation of the general partner or of all or any substantial part of his properties;

(4) Unless otherwise provided in the partnership agreement or with the consent of all partners, the continuation of any proceeding against him seeking reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief under any statute, law, or regulation, for 120 days after the commencement thereof or the appointment of a trustee, receiver, or liquidator for the general partner or all or any substantial part of his properties without his agreement or acquiescence, which appointment is not vacated or stayed for 120 days or, if the appointment is stayed, for 120 days after the expiration of the stay during which period the appointment is not vacated;

(5) In the case of a general partner who is an individual, the individual's:

(i) Death; or

(ii) Adjudication by a court of competent jurisdiction as incompetent to manage his person or his property;

(6) In the case of a general partner who is acting as a general partner by virtue of being a trustee of a trust, the termination of the trust (but not merely the substitution of a new trustee);

(7) In the case of a general partner that is a separate partnership, the dissolution and commencement of winding up of the separate partnership;

(8) In the case of a general partner that is a corporation, the dissolution of the corporation or the revocation of its charter; or

(9) In the case of a general partner that is an estate, the distribution by the fiduciary of the estate's entire interest in the partnership. (1981, ch. 801, § 2; 1982, ch. 17, § 6; 1988, ch. 550.)

**Editor's note.** — Section 2, ch. 550, Acts limited partnerships formed before, on, or after 1988, provides that this act shall apply to all July 1, 1988.

### § 10-403. Powers and liabilities.

(a) *In general.* — Except as provided in this title or in the partnership agreement, a general partner of a limited partnership has the rights and powers and is subject to the restrictions and liabilities of a partner in a partnership without limited partners.

(b) *Restrictions on limiting of liability.* — A general partner may not limit the general partner's liability in the partnership agreement to persons other than his partners or the partnership. (1981, ch. 801, § 2; 1982, ch. 873.)

**Cross reference.** — As to similar provisions under Maryland Uniform Partnership Act, see §§ 9-301 and 9-404 of this article.

The partnership relationship is a fiduciary one, a relation of trust. *Allen v. Steinberg*, 244 Md. 119, 223 A.2d 240 (1966).

**Dealings covered by principle of utmost good faith.** — The principle of utmost good faith covers not only dealings and transactions occurring during the partnership but also those taking place during the negotiations leading to the formation of the partnership.

## § 10-404

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Allen v. Steinberg, 244 Md. 119, 223 A.2d 240 (1966).

**Partner as trustee and cestui quo trust.** — A partner is a trustee to the extent that his duties bind him, a cestui quo trust as far as the duties that rest on his copartners. Allen v. Steinberg, 244 Md. 119, 223 A.2d 240 (1966).

**Power not specifically delegated by agreement presumed withheld.** — Power and authority not specifically delegated in a partnership agreement is presumed to be withheld. Allen v. Steinberg, 244 Md. 119, 223 A.2d 240 (1966).

**Managing partners particularly owe a fiduciary duty to inactive partners.** Allen v. Steinberg, 244 Md. 119, 223 A.2d 240 (1966).

**Authority of managing partners ex-**

ceeded. — Where the authority given the managing partners was promotion for the development of land, and in this regard to accept title to purchased assets and "hold same for the benefit of the partnership" and "to execute all necessary deeds, bills of sale or any and all other papers for the conveyance of any and all of said assets in order to effectuate the purpose of said partnership," it is difficult to stretch such authorization into an authorization for the managing partners to mortgage land without the partnership receiving the proceeds of the mortgage, or into an authorization for the managing partners to make unsecured loans to themselves, particularly without advising the limited partners of their intent to do so. Allen v. Steinberg, 244 Md. 119, 223 A.2d 240 (1966).

## § 10-404. Contributions by general partner.

A general partner may make contributions to the limited partnership and share in the profits and losses of, and in distributions from, the limited partnership as a general partner. A general partner also may make contributions to and share in profits, losses, and distributions as a limited partner. A person who is both a general partner and a limited partner has the rights and powers, and is subject to the restrictions and liabilities, of a general partner and, except as provided in the partnership agreement, also has the powers, and is subject to the restrictions, of a limited partner to the extent of his participation in the limited partnership as a limited partner. (1981, ch. 801, § 2.)

## § 10-405. Voting.

The partnership agreement may grant to all or certain identifiable general partners the right to vote (on a per capita or any other basis), separately or with all or any class of the limited partners, on any matter. (1981, ch. 801, § 2.)

*Subtitle 5. Finance.*

## § 10-501. Form of contribution.

The contribution of a partner may be in cash, property, services rendered, or a promissory note or other binding obligation to contribute cash or property or to perform services. (1981, ch. 801, § 2.)

**Former provisions.** — For cases decided under former requirement that special partner's contribution to partnership be in "actual

cash payments," see *Lineweaver v. Slagle*, 64 Md. 465, 2 A. 693 (1896); *Safe Deposit & Trust Co. v. Cahn*, 102 Md. 530, 62 A. 919 (1900).

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